

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CR. NO. 22-20504

v.

HON. JONATHAN C. GREY

AWS MOHAMMED NASER,

Defendant.

/

**RESPONSE IN OPPOSITION TO GOVERNMENT'S REQUEST FOR  
ADDITIONAL TIME FOR DISCOVERY PRODUCTION & CIPA FILINGS**

The government has represented to defense counsel that they would not need security clearance in order to properly represent Aws Naser in this case. With increasing frequency, however, the government cites “classified reasons” in its requests for additional delays. In the face of that generalized proffer, defense counsel are hamstrung to defend Mr. Naser, file and respond to motions, and effectively argue on his behalf, because we do not have the information the government cites. This leaves Mr. Naser with no advocate for his due process and constitutional rights as a defendant in our judicial system. It is prejudicial, because the government is seeking a six-year delay between his last offense conduct, and the production of discovery.

Most recently, on October 16, 2023, the government filed a request for additional time to complete discovery and file its CIPA motions. (ECF No. 79.) Its reasoning –

other than the government’s desire to “ensure the process is complete, organized, and as streamlined and easy as possible” – is hidden from defense counsel, provided only in an accompanying classified brief. (ECF No. 79, PageID.415.)

Aws Naser opposes the government’s request for more time. Although it is hard to respond to a secret brief, there are facts about Mr. Naser and this case that make the government’s request unreasonable.

This is not the government’s first request for a delay. The government has been asking for more and more time since the inception of this case. This, even though the *latest* conduct alleged in the indictment ended nearly six years ago, in 2017. (ECF No. 1.) Mr. Naser has been in state custody since then. The government has had more than five uninterrupted years to “complete, organize, and streamline[]” its discovery.

On January 11, 2023 (ten months ago), the government requested that the district court set the CIPA deadline “for about six months from now.” (ECF No. 43, PageID.171, Status Hr’g before J. Borman.) That date would have been July 11, 2023.

On April 5, 2023 (seven months ago), the government asked the district court for “more than four months [from now]. We would ask for a status conference in four months to provide the Court with additional information. . . we think it’s going to be perhaps as much as eight months.” (ECF No. 53, PageID.222, Status Hr’g before J. Hood.)

On May 16, 2023 (five months ago), this Court declined to rule on the government’s request for an eight-month delay. (ECF No. 58, PageID.285.) The Court

kept the August 9, 2023 status conference date to receive an update about the discovery at that time.

On August 9, 2023 (two and a half months ago), the government reiterated its request to delay the discovery deadline until December 2023. (ECF No. 75, PageID.391-92, Status Hr'g before J. Grey.) The government suggested this Court set the next status conference “for sometime in mid-December or sometime in January.” (Id., PageID.392.) The Court inquired further, asking “[W]hat is the harm in met setting [October 1] and then putting you [] through your paces and requiring [the government] to provide responsive information by that date?” (Id. at PageID.397.) The government explained that “part of the obstacle at this point is me and Ms. Mohsin having to go through [all discovery] as the only attorneys who know everything about this case to where we can, you know, fully make the final calls. . . . [W]e only have . . . two attorneys who know this case well enough to get through it.” (Id. at PageID.398-99.)

The Court concluded the August 9 status conference by setting Monday, November 6, 2023 as the cutoff date for discovery and CIPA motions. (Id. at PageID.400-401.) **That date is six years and seven days from the last alleged offense conduct.** (ECF No. 1.)

Meanwhile, despite the clunky discovery disclosure process in place, defense counsel has managed to review nearly everything produced to date. The Federal Community Defender has staffed this case appropriately so as to review the discovery materials in a timely manner. At this point, the defense believes the government has not

completed non-classified Rule 16 discovery, although it maintained it could complete it by the end of May. (ECF No. 53, PageID.220-222.) For example, the government has not disclosed any experts it intends to use, their expert reports, or their opinion summaries. The government's request to designate this case as complex made much of the experts as one reason the case is complex. (ECF No. 25, PageID.71, Gov't Mtn for Complex Case Designation (citing “[e]pert witness testimony for, among other things, chemistry, explosives, latent print analysis, ISIS, ISIS propaganda, drones, and handwriting” as one reason to designate the case complex.))

Naser continues to oppose further delay, maintains his right to a speedy trial (ECF No. 76), and opposes the designation of this case as complex. (*See* ECF Nos. 46, 69.) Naser also requests that the government reevaluate whether security clearance is necessary for his defense counsel to effectively represent him in this matter.

Respectfully submitted,

**FEDERAL COMMUNITY DEFENDER**

s/  
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Dated: October 23, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the parties of record.

Signed,

s/Amanda N. Bashi

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Dated: October 23, 2023